



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R04-OAR-2018-0183; FRL-9978-91-Region 4]

Approval of AL Plan for Control of Emissions from Commercial and Industrial Solid Waste Incineration Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state plan submitted by the State of Alabama, through the Alabama Department of Environmental Management (ADEM) on May 19, 2017, and supplemented on October 24, 2017, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Commercial and Industrial Solid Waste Incineration (CISWI) units. The state plan provides for implementation and enforcement of the EG, as finalized by EPA on June 23, 2016, applicable to existing CISWI units for which construction commenced on or before June 4, 2010, or for which modification or reconstruction commenced after June 4, 2010, but no later than August 7, 2013. The state plan establishes emission limits, monitoring, operating, recordkeeping, and reporting requirements for affected CISWI units.

DATES: Comments must be received on or before [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. [EPA-R04-OAR-2018-0183] at <https://www.regulations.gov>. Follow the online instructions for submitting comments.

Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Mark Bloeth, South Air Enforcement and Toxics Section, Air Enforcement and Toxics Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303. Mr. Bloeth can be reached via telephone at 404-562-9013 and via email at bloeth.mark@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 129 of the Clean Air Act (CAA or the Act) directs the Administrator to develop regulations under section 111(d) of the Act limiting emissions of nine air pollutants (particulate matter, carbon monoxide, dioxins/furans, sulfur dioxide, nitrogen oxides, hydrogen chloride, lead, mercury, and cadmium) from four categories of solid waste incineration units: municipal solid waste; hospital, medical, and infectious solid waste; commercial and industrial solid waste; and other solid waste.

On December 1, 2000, EPA promulgated new source performance standards (NSPS) and EG to reduce air pollution from CISWI units, which are codified at 40 CFR part 60, subparts CCCC and DDDD, respectively. *See* 65 FR 75338. EPA revised the NSPS and EG for CISWI units on March 21, 2011. *See* 76 FR 15704. Following promulgation of the 2011 CISWI rule, EPA received petitions for reconsideration requesting that EPA reconsider numerous provisions in the rule. EPA granted reconsideration on certain issues and promulgated a CISWI reconsideration rule on February 7, 2013. *See* 78 FR 9112. Subsequently, EPA received petitions to further reconsider certain provisions of the 2013 NSPS and EG for CISWI units. On January 21, 2015, EPA granted reconsideration on four specific issues and finalized reconsideration of the CISWI NSPS and EG on June 23, 2016. *See* 81 FR 40956.

Section 129(b)(2) of the CAA requires states to submit to EPA for approval state plans and revisions that implement and enforce the EG – in this case, 40 CFR part 60, subpart DDDD. State plans and revisions must be at least as protective as the EG, and become federally enforceable upon approval by EPA. The procedures for adoption and submittal of state plans and revisions are codified in 40 CFR part 60, subpart B.

II. Review of Alabama’s CISWI State Plan Submittal

Alabama submitted a state plan to implement and enforce the EG for existing CISWI units in the state¹ on March 14, 2014. On May 19, 2017, Alabama submitted a revised plan, which was supplemented on October 24, 2017. EPA has reviewed the revised plan for existing CISWI units in the context of the requirements of 40 CFR part 60, subparts B and DDDD. State plans must include the following nine essential elements: identification of legal authority;

¹ The submitted state plan does not apply in Indian country located in the state.

identification of mechanism for implementation; inventory of affected facilities; emissions inventory; emission limits; compliance schedules; testing, monitoring, recordkeeping, and reporting; public hearing records; and, annual state progress reports on plan enforcement.

A. Identification of Legal Authority

Under 40 CFR 60.26 and 60.2515(a)(9), an approvable state plan must demonstrate that the State has legal authority to adopt and implement the EG's emission standards and compliance schedule. In its submittals, Alabama cites the following State law provisions for its authority to implement and enforce the plan: Code of Alabama Section 22-28-11 (adopt emission requirements); Code of Alabama 22-28-14 (adopt regulations to prescribe emissions standards and adopt compliance schedules); Code of Alabama Section 22-22A-5(10) (authority to issue orders, citations, notices of violation, licenses, certifications, and permits); Code of Alabama Section 22-22A-5(20) (authority to perform any other necessary duty); Code of Alabama Section 22-28-18 (authority to require use of pollution control equipment); Code of Alabama Section 22-28-19A (authority to conduct inspections and sample air contaminants); Code of Alabama Section 22-28-20 (authority to require recordkeeping); and Code of Alabama Section 22-28-22 (proceedings upon violation; penalties; subpoenas; injunctions). In addition to the foregoing statutory provisions, Alabama also notes that it has adopted rules into the Alabama Administrative Code to implement and enforce its air quality program. EPA has reviewed the cited authorities and has preliminarily concluded that the State has adequately demonstrated legal authority to implement and enforce the CISWI state plan in Alabama.

B. Identification of Enforceable State Mechanisms for Implementing the Plan

Under 40 CFR 60.24(a), a state plan must include emission standards, defined at 40 CFR 60.21(f) as "a legally enforceable regulation setting forth an allowable rate of emissions into the

atmosphere, or prescribing equipment specifications for control of air pollution emissions.” *See also* 40 CFR 60.2515(a)(8). Alabama has adopted enforceable emission standards for affected CISWI units at Rule 335-3-3.05(6). EPA has preliminarily concluded that the rule meets the emission standard requirement under 40 CFR 60.24(a).

C. Inventory of Affected Units

Under 40 CFR 60.25(a) and 60.2515(a)(1), a state plan must include a complete source inventory of all CISWI units. Alabama has identified affected units at four facilities: National Cement, Argos, Holcim, and CEMEX. Omission from this inventory of CISWI units does not exempt an affected facility from the applicable section 111(d)/129 requirements. EPA has preliminarily concluded that Alabama has met the affected unit inventory requirements under 40 CFR 60.25(a) and 60.2515(a)(1).

D. Inventory of Emissions from Affected CISWI Units

Under 40 CFR 60.25(a) and 60.2515(a)(2), a state plan must include an emissions inventory of the pollutants regulated by the EG. Emissions from CISWI units may contain cadmium, carbon monoxide, dioxins/furans, hydrogen chloride, lead, mercury, nitrogen oxides, particulate matter, and sulfur dioxide. Alabama submitted an emissions inventory for CISWI units as part of its state plan. This emissions inventory contains CISWI unit emissions rates for each regulated pollutant. EPA has preliminarily concluded that Alabama has met the emissions inventory requirements of 40 CFR 60.25(a) and 60.2515(a)(2).

E. Emission Limitations, Operator Training and Qualification, Waste Management Plan, and Operating Limits for CISWI Units

Under 40 CFR 60.24(c) and 60.2515(a)(4), the state plan must include emission standards that are no less stringent than the EG. Alabama has incorporated the emission standards from the EG by reference into its regulations at Rule 335-3-3-.05, with one exception: for units in the

waste-burning kiln subcategory, Alabama’s state plan provides an equivalent production-based mercury emission limit of 58 pounds of mercury per million tons of clinker, rather than the concentration-based standard of 0.011 milligrams per dry standard cubic meter contained in 40 CFR 60, Subpart DDDD, Table 8. *See* Alabama Rule 335-3-3-.05, Table 7.

Under 40 CFR 60.2515(b), EPA has the authority to approve plan requirements that deviate from the content of the EG, so long as the state demonstrates that the requirements are at least as protective. In the February 7, 2013 rule adopting the EG for existing CISWI units, EPA discussed its methodology for developing emission limits for the subcategories of sources subject to the rule. *See* 78 FR 9112 (February 7, 2013). Though we noted that the Agency was retaining an “emissions concentration basis for the standards,” we also expressed the standard for waste-burning kiln emission limits on a production basis. *See id.* at 9122-23. For those kilns, we noted that an equivalent production-based standard for mercury would be 58 pounds of mercury per million tons of clinker. *See id.* at 9122.

In other words, EPA has previously explained that the equivalent production-based emission limit of 58 pounds of mercury per million tons of clinker for waste-burning kilns is at least as protective as the standard contained in the EG. Because Alabama’s state plan imposes either this equivalent standard or the applicable EG on waste-burning kilns—and imposes the applicable EG on all other affected CISWI units—we have preliminarily concluded that Alabama’s CISWI plan satisfies the emission limitations requirements of 40 CFR 60.24(c).

40 CFR 60.2515(a)(4) also requires a state plan to include operator training and qualification requirements, a waste management plan, and operating limits that are at least as protective as the EG. Alabama’s state plan submittal includes: operator training and qualification requirements at Rule 335-3-3-.05(5); a waste management plan at Rule 335-3-3-.05(4); and,

operating limits that are at least as protective as the EG at Rule 335-3-3-.05(6)(b) and Rule 335-3-3-.05, Table 2. Thus, we have preliminarily concluded that Alabama's state plan satisfies the requirements of 40 CFR 60.24(c) and 60.2515(a)(4).

F. Compliance Schedules

Under 40 CFR 60.24(a), (c), and (e) and 40 CFR 60.2515(a)(3), each state plan must include a compliance schedule, which requires affected CISWI units to expeditiously comply with the state plan requirements. EPA has the authority to approve compliance schedule requirements that deviate from those imposed under the EG, so long as those requirements are at least as protective as the EG. *See* 40 CFR 60.2515(b).

In the state plan at Rule 335-3-3-.05(8), Alabama generally requires that affected sources comply with the EG initial compliance requirements for CISWI units, which EPA has codified at 40 CFR 60.2700 through 40 CFR 60.2706. However, for waste-burning kilns complying with the production-based emission limit, Alabama's state plan requires compliance with the requirements applicable to Portland Cement Manufacturing Kilns, which are codified at 40 CFR part 63, subpart LLL. *See* Alabama Rule 335-3-3-.05(8)(g).

As noted above, EPA has authority to approve requirements that are at least as stringent as the EG. Here, we have preliminarily concluded that the state plan's compliance requirements for waste-burning kilns contain all relevant elements of the EG, and also impose additional recordkeeping requirements that are necessary for the effective implementation and enforcement of the equivalent limit. For these reasons, we have preliminarily concluded that Alabama's state plan satisfies the requirements of 40 CFR 60.24(a), (c), and (e) and 40 CFR 60.2515(a)(3).

G. Testing, Monitoring, Recordkeeping, and Reporting Requirements

Under 40 CFR 60.24(b)(2), 60.25(b), and 60.2515(a)(5), an approvable state plan must require that sources conduct testing, monitoring, recordkeeping, and reporting. Alabama's state plan incorporates the model rule provisions of the EG: for testing at Rule 335-3-3-.05(7); for monitoring at Rule 335-3-3-.05(10); and, for recordkeeping and reporting at Rule 335-3-3-.05(11). In addition to these requirements, Alabama imposes further monitoring, recordkeeping, and reporting requirements for waste-burning kilns operating under a production-based mercury emission limit. EPA has thus preliminarily concluded that Alabama's state plan satisfies the requirements of 40 CFR 60.24(b)(2), 60.25(b), and 60.2515(a)(5).

H. A Record of Public Hearing on the State Plan Revision

40 CFR 60.23 sets forth the public participation requirements for each state plan. The State must conduct a public hearing; make all relevant plan materials available to the public prior to the hearing; and provide notice of such hearing to the public, the Administrator of EPA, each local air pollution control agency, and, in the case of an interstate region, each state within the region. 40 CFR 60.2515(a)(6) requires each state plan include certification that the hearing was held, a list of witnesses and their organizational affiliations, if any, appearing at the hearing, and a brief written summary of each presentation or written submission.

In its submittal, Alabama submitted records, including transcripts, of two public hearings. First, a hearing was held on March 8, 2017, for the May 19, 2017 state plan submittal. Alabama held a second hearing on September 6, 2017, for the October 24, 2017, supplement. Alabama provided notice and made all relevant plan materials available prior to each hearing. Additionally, Alabama certifies in its state plan submittal that a hearing was held, and that the

State received no written or oral comments on the plan. Thus, EPA has preliminarily concluded that Alabama's CISWI plan satisfies the requirements of 40 CFR 60.23 and 60.2515(a)(6).

I. Annual State Progress Reports to EPA

Under 40 CFR 60.25(e) and (f) and 40 CFR 60.2515(a)(7), the State must provide in its state plan for annual reports to EPA on progress in enforcement of the plan. Accordingly, Alabama provides in its plan that it will submit reports on progress in plan enforcement to EPA on an annual (calendar year) basis, commencing with the first full reporting period after plan revision approval. EPA has preliminarily concluded that Alabama's CISWI plan satisfies the requirements of 40 CFR 60.25(e) and (f) and 40 CFR 60.2515(a)(7).

III. Proposed Action

Pursuant to CAA section 111(d), CAA section 129, and 40 CFR part 60, subparts B and DDDD, EPA is proposing to approve Alabama's state plan for regulation of CISWI units as submitted on May 19, 2017 and supplemented on October 24, 2017. In addition, EPA is proposing to amend 40 CFR part 62, subpart B to reflect this action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a 111(d)/129 plan submission that complies with the provisions of the CAA and applicable Federal regulations. In reviewing 111(d)/129 plan submissions, EPA's role is to approve state choices, provided they meet the criteria and objectives of the CAA and EPA's implementing regulations. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001).

In addition, this rule is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA. It also does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994). And it does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because EPA is not proposing to

approve the submitted plan to apply in Indian country located in the state, and because the submitted plan will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 62

Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Manufacturing, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Waste treatment and disposal.

Authority: 42 U.S.C. 7411

Dated: May 15, 2018.

Onis “Trey” Glenn, III
Regional Administrator,
Region 4.